

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant | David Kirchhoff, <i>et al.</i> |
| Application No. 10/797,284 | Filing Date: March 10, 2004 |
| Title of Application: | Weight Control System With Meal Plan And Journal |
| Confirmation No. 2939 | Art Unit: 2185 |
| Examiner | Heidi Riviere |

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Reply Brief Under 37 CFR §41.41

Dear Sir:

Having received the Examiner's Answer, Appellant submits this Reply Brief for the above-captioned application pursuant to 37 C.F.R. §41.41 as follows.

Most of the arguments presented in the Examiner's Answer were presented during prosecution, and thus, have already been dealt with in Appellant's Appeal Brief. Appellant submits this Reply to briefly elaborate on issues raised in the Examiner's Answer.

Argument

Claim 1 recites "a . . . meal plan being automatically altered by the processor based on the updated body weight." Claims 7 and 36 recite "automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person." Claim 48 recites "automatically alter the target food consumption plan for the person based at least in part on the updated weight of the person." Claim 49 recites "the meal plan is altered based in part on the updated weight of the user." Claim 69 recites "software elements further operable to receive updated weight of the person to alter the planned set of food items for future food item consumption." Claim 74 recites the "meal plan is automatically altered by the processor based on the updated body weight." Accordingly, claims 1, 7, 36, 48-49, 69 and 74 are all directed toward a system that automatically alters the food consumption allowed to the user.

The Examiner has submitted that "[n]ot only is weight information pre-stored but this information can be updated as well" and that "Failure to reach weight goals may be used to modify food orders placed by the PDA." (Examiner's Answer, p. 24) Applicant respectfully submits that the Examiner is seizing on the last sentence presented in the specification of U.S. Patent Application Publication No. 2002/0027164 (Mault-164) to teach a system that automatically adjust meal plans. This is simply not the case. Prior to the last sentence in Mault-164, nothing is ever mentioned about altering the shopping lists presented therein. At best, Mault-164 is here referring to the creation of shopping lists for purchase of weekly/monthly items, not to the creation of a particular meal plan or automatic adjustment of that particular meal plan based on an updated weight of the user. (Par. 57)

The Examiner submits that "Mault-164 also teaches that the weight of the user is an essential part of the system utilized." (Examiner's Answer, p. 24) Even if this were so, Mault-164 still does not teach a system that automatically alters a meal plan for the person based on the updated weight of the person. Mault-164 may utilize weight infor-

mation of an individual for various purposes, however, obviousness requires a suggestion of all the elements in a claim (*CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003)) and "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385 (2007). Here, we find that the Examiner has not identified all the elements of the claims (a . . . meal plan being automatically altered by the processor based on the updated body weight), nor provided a reason that would have prompted the skilled worker to have arranged them in the manner necessary to reach the claimed invention (generic shopping lists are not the same as a meal plan; e.g. an actual meal to be consumed by the individual rather than a generic listing of various food items to be purchased at a market – Par. 53).

Conclusion

For the foregoing reasons, Applicant respectfully submits that the claimed invention embodied in each of claims 1-59 and 69-80 is patentable over the cited prior art. As such, Appellant respectfully requests that the rejections of each of claims 1-59 and 69-80 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of claims 1-59 and 69-80.

Respectfully submitted,

October 2, 2008

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